87-1357 (1)

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

No._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

Thomas R. Angel and Loretta C. Angel,

Appellants,

vs.

Judges Charles W. Froehlich, Jr., F.V. Lopardo, Gilbert Nares and Don Martinson,

Appellees.

On Appeal from the United States Court of Appeals Ninth Circuit

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This appeal is taken pursuant to Section 1257(2) of Title 28 of the United States Code and 42 USCS 1983

28 U.S.C. Section 2403(b) may be applicable and shall be served upon the Attorney General of the State.

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42 pp

QUESTION PRESENTED

When State Law [California Rules of Court, Rule 8(b)] provides not even the appearance of a fair hearing on a Judges Falsification of Reporter's Transcripts of hearings and Trials, isn't such absence of due process and protection repugnant to the Fourteenth Amendment of the United States Constitution sufficient to declare such Rule unconstitutional and require Federal Jurisdiction herein?

All parties appear in the caption of the case in the United States Supreme Court.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is printed in Appendix "A" hereto. The Order granting motions to Dismiss and Judgment thereon of the United States District Court for the Sourthern District of California is printed in Appendix "B" hereto. Notice of Appeal is printed in Appendix "C" hereto.

JURISDICTION

When the State Criminal Justice System denies even the opportunity for legal remedy, and except for legal remedy provided under 42 USCS 1983, no forum exist wherein a fair hearing or even the appearance of a fair hearing can be had on a State Judge's Falsification of Court Reporter's Transcripts.

The only civil legal provision for hearing on a judges falsification of reporter's transcripts is set forth in California Rules of Court, Rule 8(b), which, in substance, permits a party to request corrections to the transcripts from the involved judge. Such judge gives the parties 5 days notice to the

hearing, to be both heard and determined by the same involved judge, the accused felon himself. The right to a fair and impartial hearing is fundamental to due process under the Fourteenth Amendment of the United States Constitution. Denial of jurisdiction herein by the courts below violates the most fundamental principle of due process, the right to a fair and impartial hearing.

The nature of the proceeding below involves four state judges falsification of public record, court reporter's transcripts of trials and hearings, against appellants and one such judge fixed the jury against appellants. Appellants preceeded by filing complaint herein with the San Diego Grand Jury, the District Attorney of San Diego, Attorney General John K. Van De Kamp, and the State Board of Control of California. All of whom refused to take up the complaint.

Appellants filed complaint herein on November 17, 1986. The order granting motions to dismiss and judgment thereon by the United States District Court for the Southern

District of California was entered May 27, 1987. Notice of Appeal was filed June 1, 1987. The United States Court of Appeals for the Ninth Circuit affirmed lower courts order via Memorandum filed January 27, 1988.

The jurisdiction of this court is invoked under section 1257(2) of Title 28 of the United States Code and under 42 USCS 1983.

CONSTITUTIONAL and STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment of the Constitution of the United States, Section 1 in relevant part provides:

> "No State shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

42 USCS 1983 provides:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usuage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." Also provides "that suits under 42 USCS 1983 are excepted from prohibitions of

Anti-Injunctive Statute 28 USCS 2283 where there is a clear violation of due process under the Fourteenth Amendment of the United States Constitution."

18 USCS 1001 provides:

"Whoever, in any matter within the Jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000. or imprisoned not more than 5 years, or both."

18 USCS 1018 provides:

"Whoever, being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, knowingly makes and delivers as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined not more than $500. or imprisoned not more than one year, or both."

California Penal Code Section 470 provides in relevant part as follows:

"Every person who, with intent to defraud, ... alters, corrupts, or falsifies ... any record of any judgment of a court ... is guilty of forgery."

California Penal Code Section 471 provides:

> "Every person who, with intent to defraud, another, makes, forges, or alters any entry in any book of records, or any instrument purporting to be any record or return specified in preceding section, is guilty of forgery."

California Penal Code Section 132 provides:

> "Every person who upon any trial, proceeding, inquiry, or investigation whatever, authorized or permitted by law, offers in evidence, as genuine or true, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged or fraudulently altered or ante-dated, is guilty of felony."

California Rules of Court Rule 8(b) provides:

> "If any party files a request for correction of the transcripts within 10 days after the mailing by the clerk of the notice that the transcripts have been completed, the clerk sets a time not more than 10 days thereafter for certification of the transcripts by the judge who tried the case, and gives not less than 5 days notice thereof to all parties. At the time set or at the time to which the judge may continue the hearing, he determines the request for correction, and if none is allowed, certifies the transcript as correct ...."

STATEMENT OF THE CASE

The judges falsification of court reporter's transcripts involves 3 related

lawsuits. (Appellants referred to hereinafter as Angels) The original lawsuit was for specific performance of a contract to transfer real property, State case no. N8598, ending in a settlement made, without Angels knowledge, by the Judge, and sealed thereto until this date by falsified court reported transcript. Pursuant to the Judgment entered October 20, 1978 and signed by Judge Charles W. Froehlich, Angels have been denied appeal of the Judges ruling of nonsuit on their first two causes of action and have never been permitted to litigate causes three, four, and five in any court. The second lawsuit was a complaint to set aside judgment N8598 as rendered due to extrinsic fraud, State case no. N14705, ending against Angels via Summary Judgment. The third lawsuit was a complaint against Angels for Malicious Prosecution as to case N14705, State case no. N23298, ending in $154,000 Judgment on verdict against Angels.

On September 22, 1980, Angels filed a statement of disqualification of Judge Froehlich wherein the substantive facts were

set forth as follows:

While Angels were not present in court, Judge Froehlich made the terms of settlement in case N8598 despite Angel's attorney having informed him that such terms were in direct opposition to Angels specific instruction. Having made the terms of settlement in such fashion, Judge Froehlich orchestrated the falsification of the reporter's transcript to read that such settlement had been discussed both face-to-face and telephonically with Angels.

In Judge Froehlich's answer to such statement of disqualification, he declares under penalty of perjury that he had no knowledge or recollection of the factual material set forth in the statement sufficient to permit him to admit or deny same.

Hearing on the statement of disqualification of Judge Froehlich was heard by Judge F.V. Lopardo. The reporter's transcript of such hearing sets forth that the argument was not reported. However, Angels did observe the court reporter recording the

entire hearing. At a prior hearing, Judge F.V. Lopardo had specifically instructed his court reporter to be sure and take everything down because Angels were representing themselves.

The reporter's transcript of the hearing before Judge Gilbert Nares sets forth that the argument was not stenographically reported. Angels observed the court reporter taking down the entire argument and further, upon requesting a transcript of such hearing, the court reporter said she had to check the approximate number of pages in order to give an estimate of the cost for same. When Angels obtained the transcript from the court reporter, she informed Angels that the argument had not been recorded, and the number of pages and cost thereto was approximately 90% less than her original estimate.

At trial of case number N23298 before Judge Don Martinson, the reporter's transcript was falsified throughout against Angel's. One such falsification involved a pre-trial stipulation on admissible evidence which was

recorded in the presence of the judge, and was changed against Angeds during trial by the judge. When Angels requested, during trial and at first opportunity, to have the court reporter read back the stipulation, the judge refused. At such trial before the verdict was pronounced and in fact while the jury was in process of returning to the jury box, the opposition attorney grabbed his clients arm and said, "We got it,"

As set forth in Angels complaint herein (page 5) and documents attached thereto as Exhibit VIII, Angels evidence at trial in the original state case N8598 establishes that Angels had, under applicable State law, a written contract for purchase of the subject property. The first document signed by defendant Louis Renn states Angels had an agreement with Louis Renn for the purchase of the subject real property. In deposition, Mr. Renn identifies the word agreement in such memo to be the "Contract for purchase of real property" which specifies all terms of the agreement. Therefore such testimony

incorporates the contract by reference into the signed memo of May 29, 1977. Angels, at Renns encouragement, had a pioneer road graded and a seepage pit dug on the subject property wherein percolation tests were performed. However, and despite such trial evidence, Judge Froehlich ruled that there was no contract for the purchase of real property.

ARGUMENT

The United States District Court dismissed cause herein "on the grounds that no claim had been stated by operation of the Anti-Injunctive Act, 28 USCS 2283." Yet suits under 42 USCS 1983 are excepted from prohibitions of Anti-Injunctive statute 28 USCS 2283 where there is a clear violation of due process under the Fourteenth Amendment of the United States Constitution.

District Courts specific given reason for invoking the Anti-Injunctive statute 28 USCS 2283 is set forth in the reporter's transcript, pg. 3, lines 14-17 as follows: "Although the plaintiffs have filed complaints with the various state and judicial watchdog

agencies, I think it's obvious that their proper remedy is to appeal any judgment against them."

Only two avenues of remedy are available via civil appeal, and those are either an abuse of discretion or an excess of jurisdiction. Neither of which provide remedy for criminal wrongs committed by the judge. And falsification of reporter's transcripts (Public Record) of hearings and trials is a felony under both California and Federal law. California law being California Penal Code Sections 132, 470 and 471, and Federal law being 18 USCS 1001 and 18 USCS 1018.

Of significant importance, Civil Appeal presupposes and the law demands the existence of some trial court procedure allowing for a fair and impartial hearing as to any issue raised on appeal. Unfortunately, civil law provides for no fair and impartial hearing at the state trial court level when judges falsify the reporter's transcript's of hearings and trials. In this regard, California Rules of Court, Rule 8(b) provides

no remedy at all. Such rule permits less than 5 days to obtain and produce credible evidence against the accused felon. Even the criminal justice system, with all the resourses available to it, requires much longer preparation in prosecution of any accused felon. Further, such rule requires the litigant to seek remedy only from the accused felon. Where else in law is the accused felon permitted to determine his own guilt or innocence? Any judge who falsifies court record is most unlikely to determine against himself. Judges under such State Rule, and so inclined, are given license to victimize and brutalize litigant after litigant. Do judges require such insulation, such privilege? Is the public well served or served at all by such condition? California Rules of Court, Rule 8(b) is a violation of due process and equal protection afforded under the Fourteenth Amendment of the United States Constitution in that it denies even the appearance of a fair and impartial hearing.

There is no state law excepting California Rules of Court, Rule 8(b) which requires the pursuit of civil remedy for criminal wrongs. Civil appeal as to the judges criminal acts is not only improper, it is impossible under current State law.

In accordance with Zablocki v Redhail (1978) 434 US-374, 54 L Ed 2d 618, 98 S Ct 673, 24 FR Serv 2d 1313, "Individuals seeking relief under Civil Rights Act (42 USCS Section 1983) need not present their federal constitutional claims in State Court before coming to federal forum." In accordance with Scott v Vandiver (1973, CA 4 SC) 476 F 2d 238; Conover v Montemuro (1972, CA 3 PA) 477 F 2d 1073, "Claimant under 42 USCS Section 1983 does not have to exhaust state judicial remedies before pursuing his federal cause of action."

The Ninth Circuit has determined that the judges herein are insulated by judicial Immunity and that the judges falsification of reporter's transcripts of trial and hearings and jury fixing serve as patterns deserving

imitation, as typical, "paradigmatic." Hopefully, Circuit judges Koelsch, Anderson and Farris are alone in their definition of justice. One stated reason for urging oral arguments at the Ninth Circuit - which was denied - was that public confidence in our judicial system is essential?? (God help us All)

The Ninth Circuit has determined that the "Ultimate Acts" alleged neither show nor can show "that the judges' ultimate actions were not judicial or beyond the scope of the court's jurisdiction ..."

In Ultimate terms, how can any possible "Ultimate Acts" justify the elimination of hearing by falsified transcripts on 3 causes of action, being causes 3, 4 and 5 of the underlying original case N8598. Judgment in case N8598 sets forth that causes 3, 4 and 5 were dismissed pursuant to stipulation of parties, being the judges settlement secured by falsified transcript. A copy of such judgment is contained in complaint herein as Exhibit I. Information as to what these 3

causes involved or were even entitled has been presented nowhere in the instant case. However, Ninth Circuit via decision determines facts and outcome of such causes absent any knowledge and absent any hearing by any court below or any court anywhere.

Additionally, when Angels addressed the merits of their original case at the State trial court level, Judge Nares herein deleted the entifre argument from transcript,supra. Since it is a requirement in lawsuits to set aside judgments (case N14705) to both plead and prove a meritorious underlying lawsuit, Angels moved the State trial court to determine the merits of such case. The court refused such hearing and made determination on the grounds Angels were attempting to relitigate the original underlying case. More specifically, and as to causes 3, 4 and 5, how does one relitigate that which was never litigated??

As to causes one and two of Angels underlying original case, Angels established with documented evidence in complaint herein

that they were denied real property in case N8598 and case N14705 thereto related. And Angels were denied personal property in the amount of $154,000 plus interest in case N23298. All such denials of due process and equal protection was accomplished through the judges falsification of the reporter's transcript of trials and hearings, etc. The "Ultimate facts" establish that the judges acts could not in any final analysis be construed to be judicial.

This results in a truly "Catch 22" situation. Angels can not obtain redress as to the instant case until favorable determination of the underlying case, yet the actions of the judges involved have effectively precluded any such determination.

The right to hearing before determination is fundamental to due process and equal protection under the Fourteenth Amendment of the United States Constitution.

In accordance with Wiesenfield v New York State (1979, SD NY) 474 F Supp 1141, "Judges are not immune from suits for declaratory or

injunctive relief, and suits under 42 USCS Section 1983 are excepted from prohibitions of anti-injunction statute (28 USCS Section 2283)."

In accordance with Ft. Eustis Book, Inc. v Beale (1979, ED Va) 478 F Supp 1170, "Immunity of public officials in action under 42 USCS Section 1983 is not applicable in actions seeking only injunctive and declaratory relief, and not damages." Angels, in accord with complaint herein, seek only injunctive and declaratory relief.

In accordance with Doe v County of Suffolk (1980, ED NY) 494 F Supp 179, "Type of immunity available to defendant turns not upon title of defendant's office but upon function defendant performed when he committed alleged unconstitutional acts." That judges herein were judicial officers when committing unconstitutional acts is admitted, that they were performing any conceivable judicial function is totally false.

Judicial immunity turns on and attaches to a judicial act. In accord with Gregory v

Thompson, 500 F 2d 59 (1974), "Where a judge's physical assault upon plaintiff - was held not to be a judicial act." The factors determining whether an act by a judge is a judicial one relate to the nature of the act itself, i.e., whether it is a function usually performed by a judge. In Ashelman v Pope, C.A. 9 (Ariz.) 1985, 769 F 2d 1360, Judge was not granted immunity because the acts complained of were outside the scope of his official duties. In Woolley v Hi-PlainsHarvestore Inc., (D.C. Okl. 1981), 550 F Supp 161, Judge lost absolute immunity wherein "Complaint by civil suit defendants alleging that civil suit plaintiffs conspired with the judge in that prior suit to deprive them of their property without due process ..." Such case is identical to Angels situation herein.

Chief Justice Powell of the United States Supreme Court emphasized that the major reason for absolute immunity is the existence of "alternative forums and methods for vindicating private rights," and that absent

such forums, litigants are precluded of any possiblility for the vindication of their rights elsewhere in the judicial system." Certainly Angels are precluded of any possibility for the vindication of their rights elsewhere in the judicial system.

In accordance with Erdmann v Stevens 458 F 2d 1205, 1208 (2 Cir 1972) Cert denied 409 US 889 (1972); See also Law Students Civil Rights Research Council Inc. v Wadmond 299 F Supp 117, 123 (SD NY 1969)(three-judge court) affd 401 US 154, 91 S Ct 720, 27 L Ed 2d 749 (1971), "No sound reason exists for holding that federal courts should not have the power to issue injunctive relief against the commission of acts in violation of a plaintiffs civil rights by State Judges acting in their official capacity." In Stump v Sparkman 435 US 847 (1978), the court held that "a Judge's private, prior agreement to decide in favor of one party is not a 'judicial act' because judicial impartiality is one proper expectation of the parties." Judicial impartiality is terminated when

Judges falsify the reporter's transcripts of hearing and trials, and judicial impartiality does not exist wherein judges determine their own guilt or innocence as to criminal acts. The Injunctive relief exception to absolute judicial immunity was reaffirmed in Heimbach v Village of Lyons 597 F 2d 344, 347 (2d Cir 1979), Slavin v Curry 574 F 2d 1256, 1264 (5th Cir 1978) and Harris v Harvey 605 F 2d 330, 335 n7 (7th Cir 1979).

By defining the limits of qualified immunity essentially in objective terms, no license is provided to lawless conduct. The public interest in deterrence of unlawful conduct and in compensation of victims remains protected by a test that focuses on the objective legal reasonableness of an official's act. Where an official could be expected to know that certain conduct would violate statutory or constitutional rights, he should be made to hesitate. In accord with Pulliam v Allen (1984) 466 US 522, 80 L Ed 2d 565, 104 S Ct 1970, "Congress intended 42 USCS Section 1983 to be independent protection for

federal rights and nothing suggests that Congress intended to extend common-law doctrine of judicial immunity to insulate state judges completely from federal collateral review."

Due process inherently involves access to our courts, i.e. Justice. Access terminating at the trial court level via falsification of reporter's transcript limits access to, and negates the reason for and existence of our upper courts. Angels right to any hearing as to their third, fourth and fifth causes of action and appeal as to causes one and two in state case N8598 was eliminated by Judge Froehlich's orchestrating the falsification of court reporter's transcript, and such conduct constitutes a violation of due process under the Fourteenth Amendment of the United States Constitution. No provision in law for an impartial and fair hearing on a judge's falsification of court reporter's transcripts violates the fundamental right to due process under the Fourteenth Amendment of the United States Constitution.

In accordance with Wirth v Surles (1977, CA 4 SC) 562 F 2d 319, 45- ALR Fed 864, Cert den 435 US 933, 55 L Ed 2d 531, 98 S Ct 1509, "There are two essential elements which must be proven by plaintiff in order to state claim upon which relief can be granted under 42 USCS Section 1983: first, conduct complained of must have been done by some person acting under color of law and second, such conduct must have subjected complainant to deprivation of rights, privileges, or immunities secured to him by constitution and laws of United States." In accord with Buchler v United States (1974, ED Cal) 384 F Supp 709, "Motion to dissmiss cannot be granted for lack of subject matter jurisdiction if complaint purports to set out federal claim, and claim is not insubstantial and frivolous." In accord with Cornelius v La Croix (1983, Ed Wis) 575 F Supp 1392, "Complaint which alleges deprivation of property without due process of law, under color of state law ... is sufficient to give court subject matter jurisdiction pursuant to 42 USCS Section 1983

and 28 USCS Section 1343." In accordance with Blount v Mande (1975, DC Md) 400 F Supp 1190, "In order to establish subject matter jurisdiction under 42 USCS Section 1983 complaint must allege facts which show deprivation of constitutional right and that acts of defendants were done under color of State law."

In accordance with Mitchum v Foster (1972) 407 US 225, 32 L Ed 2d 705, 92 S Ct 2151, "Purpose of federal civil rights statute (42 USCS Section 1983) authorizing action at law, suit in equity, or other proper proceedings for redress of deprivation, under color of state law, of rights secured by Federal Constitution and federal laws, is to interpose federal courts between states and people, as guardians of people's federal rights, and thus to protect people from unconstitutional action under color of state law, whether that action be executive, legislative, or judicial; in carrying out this purpose, Congress, by expressly authorizing suit in equity as one means of redress, has plainly authorized

federal courts to issue injunctions in section 1983 actions." In accord with Scheuer v Rhodes (1974) 416 US 232, 40 L Ed 2d 90, 94 S Ct 1683, etc., "Through civil rights statutes, Congress intended to enforce provisions of Fourteenth Amendment against those who carry badge of authority of state and represent it in some capacity, whether they act in accordance with their authority or misuse it." In accordance with District of Columbia v Carter (1973) 409 US 418, 34 L Ed 613, 93 S Ct 602, etc., "purpose of 42 USCS Section 1983 was to afford federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance, or otherwise, State laws might not be enforced and claims of citizens to enjoyment of rights, privileges, and immunities guaranteed by Fourteenth Amendment might be denied by State agencies."

In accord with Tyler v Lark (1973, CA 8 Mo) 472 F 2d 1077, cert den 414 US 864, 38 L Ed 2d 84, 94 S Ct 114, "42 USCS Section 1983 was designed to provide means of redress for past violations of civil rights." In accord with

Duchesne v Sugarman (1977, CA 2 NY) 566 F 2d 817, "42 USCS Section 1983 was designed to protect individuals against misuse of power made possible only because wrongdoer is clothed with authority of State law." Arguments as set forth herein, were set forth in pleadings at the courts below.

CONCLUSION

Defendants, each one, being judges, were clothed with the authority of State law. The judge's conduct of falsifying reporter's transcripts of trials and hearings must be preceived as not a normal judicial function. Such conduct deprived Angels of hearings on 3 causes, deprived Angels of appeal on 2 causes, and with falsified and absent court record and jury fixing rendered redress with the upper courts a complete and total mockery. And such conduct deprived Angels of property, both real and personal.

Federal District Court demands Angels go forward, or backward, depending on your viewpoint, with State civil appeal for criminal wrongs absent a fair and impartial

hearing at the trial court level, and thereto absent a valid record or any record in certain instances.

Ninth Circuit's memorandum of decision encourages judge's falsification of court reporter's transcripts of trials and hearings and jury fixing since litigants can not address such criminal acts until there is a favorable court determination on the original case, which has been made unobtainable by the criminal acts of the involved judges. Such decision insures absolute judicial immunity and erases all hope for and confidence in judicial accountability.

Ninth Circuit assumes that no cause was stated nor can be stated because Angels did not receive a favorable state court ruling on the underlying original case at trial. In so doing the Ninth Circuit effectively makes a determination of facts and law as to the underlying original case without hearing and compounds to death the already overwhelming injustice.

When 4 judges out of 8 in any particular court, as is the case in this instance (San Diego North County Court) are falsifying court record it would seem to make considerable sense to investigate such conduct if the public is to receive any protection whatsoever.

While the judges, in their criminal acts, appear to all the world judicial; Angels, for their pursuit of legal remedy, are branded malicious and buried under insurmountable debt of judgment. This is not just, and can not be called justice.

Why does Ninth Circuit in their memorandum of decision flag the fact that Angels are laymen? Is this an issue somewhere contained in the substantive facts? How is this fact, without more, relevant to decision herein? Is the purpose to denigrate the ligitimacy of this appeal? After nine years of litigation the hard way, Angels are informed on the impossibility of obtaining legal representation against one judge, much less 4 judges. And after 9 years of litigation

involving extensive research, reading and rereading of trial transcript and all moving papers done by the attorneys, and all law relevant to specific performance of a contract to transfer real property, Angels are informed of the merit of the original underlying case. Angels have not litigated for nine years because of any lack of belief in their original case, nor have Angels litigated for nine years out of any malice, which would be tantamount to burning one's self at the stake.

It is common knowledge among attorneys that court reporter's transcripts of trials and hearings are routinely falsified by judges in San Diego North County Superior Court. Attorneys do not readily pursue legal remedy when a judge falsifies court record because they must appear before the same judges again and again on behalf of many clients. Who then but a layperson will pursue this injustice, and Who but the United States Supreme Court can end this injustice?

For all the foregoing reasons, Angels ask that California Rules of Court, Rule 8(b) be

ruled unconstitutional and that decisions of the courts below be reversed.

Dated: February 8, 1988

Respectfully Submitted,

Thomas R. Angel

Loretta C. Angel

Appendix A-1

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 27, 1988

FOR THE NINTH CIRCUIT

THOMAS R. and LORETTA C. ANGEL Plaintiffs-Appellants) vs. JUDGE CHARLES W. FROEHLICH, JR., ET AL.,) Defendants-Appellees.)	)	C.A. No. 87-5965 D.C. No. CV-86-2270-S MEMORANDUM*

On Appeal From the United States District Court for the Southern District of California
Edward J. Schwartz, District Judge, Presiding

Submitted January 14, 1988**

Before: KOELSCH, ANDERSON and FARRIS, Circuit Judges

Appellants, both laymen, find themselves in a legal thicket. Their suit, now here on appeal from a judgment of dismissal in the district court is based upon the Civil Rights

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

**The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a); Ninth Circuit Rule 34-4.

Act, 42 U.S.C. section 1983 (1982); it ostensibly sought injunctive relief against several California Superior Court judges based upon the latter's assertedly due process violations with respect to rulings made and acts taken in pending litigation.

No useful purpose would be served by an extended explication of the reasons given by the district court for its summary disposition of appellants' action. Suffice it to say that on this record the result announced, the dismissal, was correct.

Judicial immunity serves to insulate the defendants from this suit. As pointed out in Ashelman v. Pope, 793 F.2d 1072, 1078 (9th Cir. 1986)(en banc), this court must not "construe the immunity doctrines too narrowly by focusing on underlying actions instead of looking to the ultimate acts." So considered the "ultimate acts" as alleged by appellants neither show nor can show "that the judges' ultimate actions were not judicial or beyond the scope of the court's jurisdiction...." To the contrary, all are well within the contours

of the "paradigmatic judicial acts involved in resolving disputes between parties who have invoked the jurisdiction of a court." Forrester v. White, No. 86-761, 48 S.Ct. Bull. (CCH) B411 (January 12, 1988).

AFFIRMED. Usual costs to appellees.

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FILED
MAY 27, 1987

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MAY 28, 1987

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

THOMAS R. ANGEL, ET AL., Plaintiffs, v. JUDGES CHARLES W. FROEHLICH, JR., et al., Defendants.	No. 86-2270-S(CM) ORDER GRANTING MOTIONS TO DISMISS AND JUDGMENT THEREON Hearing Date: April 20, 1987 Time: 10:30 a.m.

The motions of defendants to dismiss the action came on regularly to be heard on April 20, 1987, before the Honorable Edward J. Schwartz, Senior Judge presiding. Defendants appeared by Lloyd M. Harmon, Jr., County Counsel, by Phillip L. Kossy, Deputy County Counsel; plaintiff Loretta C. Angel appeared pro se; there was no appearance for plaintiff Thomas R. Angel. The Court having given due consideration to said matters, including

pleadings filed and argument, and good cause appearing therefor,

IT IS ORDERED that the motions to dismiss of defendants be, and hereby are, granted on the grounds that no claim has been stated by operation of the Anti-Injunction Act, 28 United States Code section 2283 and that this Court has no jurisdiction over the claim in that plaintiffs have not alleged a constitutional basis for their claim.

IT IS FURTHER ORDERED that the motions of defendants for attorneys' fees be, and hereby are, denied.

IT IS ORDERED, ADJUDGED AND DECREED that the complaint and action be, and hereby is, dismissed.

DATED: May 26, 1987

Signed / E. J. Schwartz

JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:

NOT Signed

LORETTA C. ANGEL, Pro se

Appendix C-1

Thomas R. & Loretta C. Angel
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IN THE UNITED STATES COURT

OF APPEALS FOR THE NINTH CIRCUIT

THOMAS R. ANGEL, and LORETTA C. ANGEL Appellant/Plaintiffs	Court
vs.	of Appeals No.
JUDGES CHARLES W. FROEHLICH, JR., F. V. Lopardo, Gilbert Nares and Don Martinson Appellee/Defendants	87-5965

Notice of appeal to the Supreme Court of the United States

Notice is hereby given that Thomas R. Angel and Loretta C. Angel, the Plaintiffs and Appellants herein, hereby appeal to the Supreme Court of the United States from the final judgment of this court entered January 27, 1988 affirming dismissal of case herein by the United Statess District Court for the Southern District of California entered May 28, 1987.

This appeal is taken pursuant to section 1257(2) of Title 28 of the United States Code and pursuant to 42 USCS 1983.

Date: February 8, 1988

Signed//_____
Thomas R. Angel
Plaintiff/Appellant pro se

Signed//_____
Loretta C. Angel
Plaintiff/Appellant pro se

Supreme Court, U.S.
FILED
MAR 11 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-1357

In The

Supreme Court of the United States

October Term, 1987

THOMAS R. ANGEL AND LORETTA C. ANGEL,

Appellants,

v.

JUDGES CHARLES W. FROEHLICH, JR., F. V. LOPARDO, GILBERT NARES and DON MARTINSON,

Appellees.

On Appeal From the United States Court of Appeals for the Ninth Circuit

MOTION OF APPELLEES TO DISMISS OR AFFIRM

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18 pp

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No. 87-1357

In The

Supreme Court of the United States

October Term, 1987

THOMAS R. ANGEL AND LORETTA C. ANGEL,

Appellants,

v.

JUDGES CHARLES W. FROEHLICH, JR., F. V. LOPARDO, GILBERT NARES and DON MARTINSON,

Appellees.

On Appeal From the United States Court of Appeals for the Ninth Circuit

MOTION OF APPELLEES TO DISMISS OR AFFIRM

To: The Honorable William H. Rehnquist, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the United States:

Appellees, Judges Charles W. Froehlich, Jr., F. V. Lopardo, Gilbert Nares, and Don Martinson move the court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the United States Court of Ap-

peals for the Ninth Circuit on the grounds that it is manifest that the appeal does not present a substantial federal question, that any federal question sought to be reviewed was not timely and properly raised, and that the judgment rests on an adequate nonfederal basis.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit was not certified for publication but is reprinted as Appellants' Appendix A. The order of the United States District Court for the Southern District of California is reprinted as Appellants' Appendix B.

PROVISION INVOLVED

The California Rules of Court, Rule 8(b) provides a method for correction and certification of a record on appeal in the California Court of Appeals and Supreme Court and is set forth as Appendix 1.

ISSUE PRESENTED

Whether the Anti-Injunction Act, Doctrines of Judicial Immunity, and/or Abstention Principles of *Younger v. Harris* (1971) 401 U.S. 37 apply to appellants' action.

STATEMENT OF THE CASE

Appellants brought an action under the Civil Rights Act, 42 U.S.C. section 1983, seeking injunctive relief against four California Superior Court judges. They allege due process violations with respect to rulings made and acts taken in litigation. (Pet. App. A-2). The district court granted appellees' motion to dismiss on May 26, 1987 (Pet. App. B-2). The Court of Appeals for the Ninth Circuit affirmed the district court's order on January 27, 1988. (Pet. App. A-3)

The appellants complain of events in three related state court actions. The appellants allege the appellee judges falsified the court reporter's transcripts in three related lawsuits brought in the Superior Court of California for the County of San Diego. The appellants filed the original state court action for specific performance of a contract to transfer real property. (San Diego County Superior Court Case No. N 8598). This case was settled before trial by the attorney for appellants, allegedly without their knowledge, and judgment was entered October 29, 1978 and signed by the Honorable Charles W. Froehlich, Jr., Judge of the Superior Court for the County of San Diego. The settlement appeared to relate to the first two causes of action and the remaining causes of action were dismissed as part of the settlement. (Petition pp. 5-6).

The second lawsuit was a complaint to set aside the judgment in the first lawsuit and alleged extrinsic fraud (San Diego County Superior Court Case No. N 14705). In the second action, a summary judgment was granted against appellants (Petition p. 6).

With regard to an unspecified proceeding, Judge Froehlich was scheduled to hear a motion set for October 10, 1980. On September 22, 1980, appellants filed, pursuant to California Code of Civil Procedure section 170.3, a "Statement of Disqualification" of Judge Froehlich to hear any matters with regard to the proceeding (Petition p. 6). The hearing on the "Statement of Disqualification" of Judge Froehlich was heard by Appellee Judge F. V. Lopardo (Petition p. 7). Appellants allege the reporter's transcript of this hearing specifies that "argument" was not reported (Petition p. 7). Apparently, the court reporter was following the standard procedure of recording all events in open court except the "argument" of counsel or pro per. Appellants also complained of the reporter's transcript in a hearing before Appellee Judge Gilbert Nares. The reporter's transcript set forth that the "argument" was not stenographically reported (Petition p. 8). Appellants make no reference to the case or proceeding which Judge Nares heard.

The third lawsuit (San Diego County Superior Court Case No. N 23298) was an action against appellants for malicious prosecution involved in the second lawsuit. A judgment was entered, after verdict of the jury, in the amount of $154,000 against appellants (Petition p. 6).

Appellee Judge Don Martinson heard the malicious prosecution trial against appellant (San Diego County Superior Court Case No. N 23298). Appellants allege the reporter's transcript was falsified against appellants. Appellants state one such falsification involved a pre-trial stipulation on admissible evidence which was recorded in the presence of the judge, and was changed against appel-

lants during the trial by the judge. During the trial, appellants requested the court reporter to read back the stipulation, which the court did not allow (Petition pp. 8 and 9). Appellants also alleged Judge Martinson fixed the jury against them (Petition p. 2). To support this allegation, appellants state as follows:

> "At such trial before the verdict was pronounced and in fact while the jury was in the process of returning to the jury box, the opposition attorney grabbed his clients [sic] arm and said, 'We got it,' [sic] (Petition p. 9).

The appellants, at the conclusion to the petition, synopsize by saying:

> "It is common knowledge among attorneys that court reporter's transcripts of trials and hearings are routinely falsified by judges in the San Diego North County Superior Court." (Petition p. 28)

The appellants also advise that they referred this matter to appropriate local agencies for consideration, without success, and stated at page two of their petition:

> "Appellants preceded by filing complaint herein with the San Diego grand jury, the District Attorney of San Diego, Attorney General John K. Van de Kamp, and the State Board of Control of California. All of whom refused to take up the complaint." (Petition p. 2)

SUMMARY OF ARGUMENT

The District Court concluded appellants did not state a constitutional basis for their claim, and the Anti-Injunction Act precluded their action. Similarly, the Court of Appeals for the Ninth Circuit concluded judicial immunity insulated the appellees from appellants' suit. As the Jurisdictional Statement herein shows, all acts of which appellants complain were within the scope of the court's jurisdiction. (*Stump v. Sparkman* (1978) 435 U.S. 349). Appellants allege an action under 42 U.S.C. Section 1983, yet failed to exhaust their state appellate remedies; the abstention principles of *Younger v. Harris* (1971) 401 U.S. 37 apply.

The issuance of an injunction would be ineffectual where the action is to restrain only four of at least fifty-two sitting superior court judges in San Diego County.

ARGUMENT

I

APPELLANTS HAVE NOT STATED A CLAIM FOR INJUNCTIVE RELIEF

A. The Anti-Injunction Act Applies to Appellants' Claim

The Anti-Injunction Act, Title 28, United States Code Section 2283, provides as follows:

> "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

The district court determined appellants did not state a constitutional basis for their claim. The district court

concluded no claim was stated by operation of the Anti-Injunction Act. (Petition Appendix B) Similarly, the Court of Appeals for the Ninth Circuit determined that appellants "ostensibly" sought injunctive relief against the appellee judges, but that judicial immunity insulated the judges from the suit. (Petition Appendix A). Where no constitutional claim arises, appellants' action is barred by the Anti-Injunction Act.

B. The Abstention Principles of Younger v. Harris (1971) 401 U.S. 37 Apply To Bar Appellants' Action Where They Did Not Fashion A Justiciable Constitutional Claim.

Appellants assert the underlying complaint is brought pursuant to 42 U.S.C. section 1983. A proceeding for a violation of Constitutional rights under color of state law pursuant to 42 U.S.C. section 1983 is an exception to the Anti-Injunction Act (*Mitchum v. Foster* (1972) 407 U.S. 225). Nevertheless, even if appellants could properly plead a Section 1983 action, the cause of action for injunction relief itself must be appropriate. As this court stated in *Mitchum v. Foster, supra*:

> "In so concluding, we do not question or qualify in any way the principles of equity, comity and federalism that must restrain a federal court when asked to enjoin a state court proceeding." (407 U.S. at 243)

This Court had previously enunciated " . . . the national policy forbidding federal courts to stay or enjoin pending state court process except under special circumstances." (*Younger v. Harris* (1971) 401 U.S. 37, 41). This Court stated that even where a state statute is unconstitutional on its face, no injunction may issue unless

the state law is " . . . 'flagrantly and patently violative of express Constitutional prohibitions' . . ." (401 U.S. at 53) or where there is a " . . . showing of bad faith, harassment, or any other unusual circumstances that would call for equitable relief . . ." (401 U.S. at 54).

In their "question presented" appellants allege the unconstitutionality of California Rules of Court, Rule 8(b). This rule is applicable only to the California Supreme Court and the California Court of Appeal (not the California Superior Court, which is a trial court in California). Rule 8 relates to the *record on appeal.* (See Appendix 1) As appellants' "statement of the case" reflects (Petition pp. 5-10), appellants did not exhaust their state remedies of appeal to the California Court of Appeal and the California Supreme Court. This is important particularly as to appellants' second lawsuit. That action sought to declare the judgment in the land sale action void due to extrinsic fraud. Therefore, Rule 8(b) never became applicable to appellants and, in all events, is merely a rule of procedure.

As set forth in their "statement of facts," appellants complain of the events within three judicial proceedings. The original lawsuit was an action for specific performance of the conveyance of real property (San Diego County Superior Court Case No. N 8593). The case was settled short of trial by the attorney for appellants, allegedly without their knowledge, and judgment was entered on October 20, 1978 and signed by Judge Charles W. Froehlich (Petition p. 6). On September 22, 1980, appellants filed a statement of disqualification with regard to Judge Froehlich as to unspecified proceedings.

The second lawsuit of appellants was a complaint to set aside the judgment in the first case as rendered due to extrinsic fraud (San Diego County Superior Court Case No. N 14705) and ended with the court granting a summary judgment against appellants (Petition p. 6). Apparently, the appellants did not appeal the judgment entered in this case. The third action was a complaint against appellants themselves for malicious prosecution (San Diego County Superior Court Case No. N 23298, Petition p. 6).

Appellants are unable to phrase any "unusual circumstances" which would entitle them to equitable relief in this Court. Resultingly, appellants present no basis for injunctive relief under Section 1983. The *Younger v. Harris, supra,* principles are applicable even though the state proceeding is civil in nature. (*Hoffman v. Pursue, Ltd.* (1975) 420 U.S. 592, 594; see also *Sosna v. Iowa* (1975) 419 U.S. 393, 396-397, fn3; *Hicks v. Miranda* (1975) 422 U.S. 332, 351, fn20)

As this Court has stated:

> "The seriousness of federal judicial interference with State civil functions has long been recognized by this Court. We have consistently required that when Federal Courts are confronted with requests for such relief, they should abide by standards of restraint that go well beyond those of private equity jurisprudence. (*Hoffman v. Pursue, Ltd., supra,* 420 U.S. 592, 603).

In *Hoffman v. Pursue, Ltd., supra,* this Court held at page 609:

> "We therefore hold that *Younger* standards must be met to justify federal intervention in a state ju-

> dicial proceeding as to which a losing litigant has not exhausted his state appellate remedies." (See also *Pennzoil Co. v. Texaco, Inc.* (1987) 481 U.S. —) 95 L.Ed.2d 1, 19, fn16)).

Appellants' lack of confidence in the state court appellate system is of no consequence. As this Court has also held:

> "More importantly, we are of the opinion that the considerations of comity and federalism which underlie Younger permit no truncation of the exhaustion requirement merely because the losing party in the state court of general jurisdiction believes that his chances of success on appeal are not auspicious. Appellee obviously believes itself possessed of a viable federal claim, else it would not so assiduously seek to litigate in the District Court. Yet, Art. VI of the United States Constitution declares that "the Judges in every State shall be bound" by the Federal Constitution, laws, and treaties. Appellee is in truth urging us to base a rule on the assumption that state judges will not be faithful to their constitutional responsibilities. This we refuse to do. The District Court should not have entertained this action, seeking preappeal interference with a state judicial proceeding, unless appellee established that early intervention was justified under one of the exceptions recognized in Younger." (*Hoffman v. Pursue, Ltd,* supra, 420 U.S. 592, 610-611)

The fact that the time for appeal in state court has expired does not deter application of *Younger v. Harris, supra,* principles. As this Court has admonished, appellants "cannot escape *Younger* abstention by failing to assert its state remedies in a timely manner". (*Pennzoil Co. v. Texaco, Inc.* (481 U.S. —, 95 L.Ed.2d 1, 19 fn16.)

As the Ninth Circuit Court of Appeals noted, appellants " . . . *ostensibly* sought injunctive relief against several California Superior Court judges. . . ." (Emphasis added; Pet. App. A-2). *Younger v. Harris, supra,* 401 U.S. 37 abstention principles apply where appellants have not exhausted their state appellate remedies. Appellants failed to state a justiciable claim under Section 1983. As the district court found, there is a lack of jurisdiction (28 U.S.C. § 1343). (Petition, App. B-2)

II

NO INJUNCTION MAY ISSUE SINCE IT WOULD BE INEFFECTUAL

It is well settled that injunctive relief may not issue which would be ineffectual (*United States v. St. Bernard Parish* (5th Cir. 1985) 756 F.2d 1116, 1123). Here the judicial appellees are only four of at least 52 possible superior court judges in San Diego County. (Cal. Gov. Code § 69595) Enjoining these judges would do nothing to halt judicial action on the subject civil matters. Additionally Judges Froehlich and Lopardo are retired and no "threatened act" can be anticipated, nor can they be compelled to take any judicial act.

To the extent that injunctive relief might be deemed appropriate, in the interests of comity and federalism (see *Mitchum v. Foster, supra,* 407 U.S. at 243, any relief would be proper against private litigants and not the judges of the state court.

———o———

III

THE DOCTRINE OF JUDICIAL IMMUNITY PRECLUDES APPELLANTS FROM STATING A CONSTITUTIONAL CLAIM

The appellants cannot state a constitutional claim against the appellee judges herein. Title 42 U.S.C. section 1983 (1982) was not intended to abolish the doctrine of judicial immunity. (*Pierson v. Ray* (1967) 386 U.S. 547, 554-555). Judicial immunity applies "however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff." (*Clearinger v. Saxner* (1985) 474 U.S. 193, 199-200, quoting *Bradley v. Fisher* (1872) 80 U.S. (13 Wall.) 335, 347). Judges' immunity from civil liability is not "affected by the motives with which their judicial acts are performed." (*Clearinger v. Saxner, supra,* 474 U.S. 193, 200, quoting *Bradley v. Fisher, supra,* 80 U.S. (13 Wall.) 335, 347.) In their Jurisdictional Statement, appellants do not state a constitutional claim and injunctive relief is not available to appellants. As the Court of Appeal determined, all of the judges' acts of which appellants complain were within the scope of the court's jurisdiction. (Pet. App. A-2) These acts were functions normally performed by a judge. Appellants clearly state they dealt with the appellee judges in the judges' judicial capacity. (See *Stump v. Sparkman* (1978) 435 U.S. 349, 362.)

———o———

CONCLUSION

For the reasons set forth herein, appellees' motion to dismiss the appeal herein or in the alternative, to affirm the judgment of the court of appeals for the Ninth Circuit, should be granted.

Respectfully submitted,

LLOYD M. HARMON, JR.,
County Counsel
DANIEL J. WALLACE, Chief Deputy
Counsel of Record

By:

LEONARD W. POLLARD II, Deputy
Attorneys for Appellees

APPENDIX 1

CALIFORNIA RULE OF COURT, RULE 8

(a) Immediately on the completion of the reporter's transcript and any clerk's transcript the clerk shall mail notice thereof to all parties, and within 10 days after mailing of such notice, any party may file a request for correction of such transcripts. If no request for correction is filed within such time, the clerk shall certify the record as correct.

(b) If any party files a request for correction of the transcript within such time, the clerk shall set a time not more than 10 days thereafter for certification of the transcripts by the judge who tried the case, and shall give not less than 5 days' notice thereof to all parties. At the time set or at the time to which the judge may continue the hearing, he shall determine the request for correction, and if none is allowed, shall certify the transcripts as correct. If corrections are allowed by the judge, he shall fix the time within which they shall be made by the clerk or reporter within 30 days after their allowance. The parties at any time may stipulate that the whole or any portion of the record is correct, and such stipulation shall render unnecessary the certification by either the clerk or judge of the record or the portion stipulated to by the parties.

(c) If the appellant desires to have any portion of the record other than the clerk's transcript printed, he shall notify the clerk in writing at or prior to the certification of the record or the stipulation of the parties thereto. Within 15 days after certification or stipulation

he shall file with the clerk the portion of the record so printed, and the clerk shall compare and certify the same as correct.

(3)

Supreme Court, U.S.
FILED
MAR 28 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-1357

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

Thomas R. Angel and Loretta C. Angel,

Appellants,

vs.

Judges Charles W. Froehlich, Jr., F.V. Lopardo, Gilbert Nares and Don Martinson,

Appellees.

REPLY BRIEF - Opposition to Motion to Dismiss or Affirm

On Appeal from the United States Court of Appeals Ninth Circuit

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RECEIVED
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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

CASE NUMBER 87-1357

DECLARATION OF SERVICE BY MAIL (C.C.P. 1013a and 2015.5)

APPEALS COURT NO. 87-5965

DISTRICT COURT NO. 86-2270-S(CM)

I, Angela Hankins declare: That I am, and was at the time of service of the papers herein referred to, over the age of eighteen years, and not a party to the action; and I am Residing in the County of San Diego, California, within which county the subject mailing occurred. My Residence address is 2055 Village Park Way Apt. #112 Encinitas, Ca. 92024. I served the within

[REPLY BRIEF - Opposition to Motion to Dismiss or Affirm]: An original and 40 copies on the United States Supreme Court as follows: Clerk, U.S. Supreme Court, Washington, D.C. 20543

of which true and correct copies of the document filed in the cause is affixed by placing three copies thereof in a separate envelope for each addressese named hereafter, addressed to each such addressee respectively as follows:

Clerk, U.S. Court of Appeals
Post Office Box 547
San Francisco, CA 94101-0547

Phillip L. Kossy, Deputy
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San Diego, CA 92101-2469

Edward J. Schwartz, Judge
United States District Court
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San Diego, CA 92189

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Department of Justice
110 West "A" Street, Suite 700
San Diego, CA 92101

Solicitor General
Department of Justice
Washington, D.C. 20530

I then sealed each envelope and, with the postage thereon fully prepaid, deposited each in the United States mail at Encinitas, California, on March 22, 1988.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 22, 1988

Angela Hankins

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OPPOSITION to MOTION to DISMISS or AFFIRM

Appellants, Thomas R. Angel and Loretta C. Angel (hereinafter Angels), oppose Appellees (hereinafter Judges) motion to dismiss or affirm on the grounds that the appeal does present a substantial federal question, that no other forum exist for a fair and impartial hearing on such question, and on the grounds that Judgment and record are misrepresented.

OPINIONS BELOW

The opinions below are included herein by reference as set forth in Angels Jurisdictional Statement.

PROVISIONS INVOLVED

Provisions involved are included herein by reference as set forth in Angels Jurisdictional Statement.

ISSUES PRESENTED

Issues presented are included herein by reference as set forth in Angels Jurisdictional Statement.

STATEMENT OF THE CASE

Statement of the case is included herein by reference as set forth in Angels

Jurisdictional Statement.

ARGUMENT

(Argument is included herein by reference as set forth in Angels Jurisdictional Statement)

I

JUDGMENT and RECORD ARE MISREPRESENTED in JUDGES' MOTION

Judgment by the Ninth Circuit does not state that "any federal question sought to be reviewed was not timely and properly raised", nor in fact have the Judges set forth such grounds prior to the instant motion, and thereto is not properly before this court.

Judges assert, "Appellants make no reference to the case or proceeding which Judge Nares heard." (Motion p.4) The case and proceeding heard by Judge Nares is specificially set forth in Angels complaint as state case N14705 and involved Motions by defendant to Set Aside Default, Post Security and Expunge Lis Pendens. (Complaint p.3, lines 5 thru 16 via Exhibit IV)

Such Complaint and record were before both the District Trial Court and the Ninth Circuit Court of Appeals.

The hearing on Statement of Disqualification of Judge Froehlich before Judge F. V. Lopardo was as to both State Case N8598 and N14705. (Complaint, Exhibit III)

Judges assert, "As appellants' "statement of the case" reflects, Appellants did not exhaust their state remedies of appeal to the California Court of Appeal and the California Supreme Court." (Motion p.8) Such assertion is false.

II

ABSTENTION PRINCIPLES OF YOUNGER v HARRIS DO NOT APPLY TO BAR ANGELS' ACTION

In accordance with Younger v Harris (1971) 401 U.S. 41:

> "We express no view about the circumstances under which federal courts may act when there is no prosecution pending in state courts at the time the federal proceeding is begun."

As set forth to the courts below, at the time of filing complaint herein, Angels were and are impaled upon final State Court Judgments. Angels cases are not pending.

California Rules of Court, Rule 8(b) specifically sets forth the procedure for hearing and determination by the trial judge.

Rule 8(b) relates to the record on appeal, but applies in its application to the trial court. The result of such procedure is the record on appeal, and that is what makes this procedure of paramount importance.

In Younger v Harris at p.53, the court quotes Watson v Buck, 313 U.S. 402 (1941) as follows:

> "It is of course conceivable that a statute might be flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it."

California Rules of Court, Rule 8(b) denies even the appearance of a fair hearing and thereto flagrantly and patently violates expressed constitutional prohibitions and effectively eliminates all state civil forums of redress. The potential damage inherent in Rule 8(b) can not be dismissed on the basis of being "merely a rule of procedure." Indeed, it is a rule, and it is applied and therein lies the potential for insurmountable damage.

In Younger v Harris p.59, Justice Butler wrote quoting Terrance v Thompson, 263 U.S. 197, 214 as follows:

"Equity jurisdiction will be exercised to enjoin the threatened enforcement of a state law which contravenes the Federal Constitution wherever it is essestial in order effectually to protect property rights and the rights of persons against injuries otherwise irremediable; and in such a case a person, who as an officer of the state is clothed with the duty of enforcing its laws and who threatens and is about to commence proceedings, either civil or criminal, to enforce such a law against parties affected, may be enjoined from such action by a federal court of equity."

Angels have been injured as a result of California Rules of Court, Rule 8(b). Rule 8(b) was indeed applicable to Angels second lawsuit (State Case N14705) as a result of hearings before Judges Gilbert Nares and F. V. Lapordo. Both hearings are documented by way of complaint herein, supra.

In accord with Mitchum v Foster (1972) 407 U.S. 239:

"Section 1983 opened the federal courts to private citizens, offering a uniquely federal remedy against incursions under the claimed authority of State law upon rights secured by the Constitution and laws of the Nation."

In accord with Huffman v Pursue, Ltd. (1975) 420 U.S. 605:

"A civil litigant may, of course seek review in this Court of any federal claim properly asserted in and rejected by state courts. More over, where a final decision

> of a state court has sustained the validity of a state statute challenged on federal constitutional grounds, an appeal to this court lies as a matter of right. 28 U.S.C. Section 1257(2)"

Grounds set forth for appeal herein include 28 U.S.C. Section 1257(2). (Jurisdictional Statement)

Angels requested that the courts take Judicial Notice of the complete record in each such case litigated in San Diego North County Superior Court. (Complaint p.4, lines 19-21)

Appeal Courts are not trial courts. How does a litigant establish damage absent even the appearance of a fair hearing? (Jurisdictional Statement) Criminal State prosecution aside, federal forum is the only valid forum for redress as to the Judges actions.

If, in Ninth Circuit decision, the term ostensibly translates to Angels have not exhausted their state appellant remedies (Motion p.11), why does the Ninth Circuit state in decision as follows, "So considered the 'ultimate acts' as alleged by appellant's neither show nor can show 'that the judges'

ultimate actions were not judicial or beyond the scope of the court's jurisdiction ...". Ninth Circuit specificially relates Angels ability to state cause in terms of the ultimate acts of the Judges involved, not in terms of the ultimate acts of the appellate process. Such statement indicates that the appellate process would have vindicated the Judges. In any case, state record establishes that Angels have exhausted all State remedies.

III

INJUNCTION HEREIN WOULD BE EFFECTIVE

In accord with United States v St. Bernard Parish (5th Cir. 1985) 756 F.2d 1123:

> "Requiring a community to do acts which it may voluntarily choose to avoid is not a proper exercise of Judicial Power."

Such case is not applicable to Injunctive relief sought herein. Angels can not voluntarily decide not to pay judgment on verdict in the amount of $154,000. (State case N23298) Angels can not, independent of the court, set aside court judgments which have eliminated hearings via falsification of reporters transcripts. What the Judges herein

did, and specificially Judges Froehlich and Lapordo, they did as the Court and that which the courts do can be undone by Courts. Injunctive relief functions not only to prohibit Acts, but to compel Acts.

Judge Froehlich has functioned as a Judge in North County Superior Court since his resignation. Such function was written up in the local newspaper. Judges herein are 4 out of 8, not 4 out of 52. Judges assert that "Enjoining these Judges would do nothing to halt Judicial Action on the subject civil matters." (Motion p.11) Angels concern is to Halt that action which is not judicial. In accordance with Forrester v White (1988) No. 86-761, 48 S.Ct. Bull. (CCH) B411:

> "To the extent that the threat of liability encourages these officials to carry out their duties in a lawful and appropriate manner, and to pay their victims when they do not, 42 U.S.C. Section 1983 accomplishes exactly what it should."

Judges must know that they will be accountable for illegal acts.

IV

JUDICIAL IMMUNITY DOES NOT APPLY TO ILLEGAL ACTS

In accord with Pierson v Ray (1967) 386 U.S. 548:

> "The settled common-law principle that a Judge is immune from liability for damages for his judicial acts was not abolished by Section 1983."

The complaint herein is not for damages, nor does the complaint involve Judicial Acts. The complaint involves illegal acts, felonies. (Jurisdictional Statement) In accord with Cleavinger v Saxner (1985) 474 U.S. 199:

> "In Bradley v Fisher, 13 Wall. 335 (1872), it ruled that a federal judge may not be held accountable in damages for a Judicial act taken within his Court's Jurisdiction."

Again, the complaint herein is not for damages, nor are the acts complained of judicial, but rather are illegal acts.

In accord with Stumps v Sparkman (1978) 435 U.S. 350:

> "The factors determining whether an act by a judge is 'Judicial' relate to the nature of the act itself (whether it is a function normally performed by a Judge) and the expectation of the parties (whether they dealt with the Judge in his judicial capacity, ..."

Clearly, illegal acts are not judicial acts. Froehlich's decision on Angels first two causes of action in State Case N8598 was a

Judicial Act (regardless of how erroneous). Froehlichs making the terms of settlement in such case without Angels knowledge and after being informed that Angels specificially did not want such settlement was an excess of jurisdiction, but still a judicial act. However, Froehlichs sealing such settlement via orchestration of the falsification of the court reporters transcript was and is an illegal act, a felony under both State and Federal law. (Jurisdictional Statement)

CONCLUSION

For the reasons set forth herein and for those reasons set forth in Angels Jurisdictional Statement, Appellees' motion to dismiss or affirm, should be denied.

Respectfully Submitted,

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